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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

ROBERT B.,

Petitioner,

v.

THE SUPERIOR COURT OF THE COUNTY
OF RIVERSIDE,

Respondent;

DEPARTMENT OF CHILDREN'S
SERVICES,

Real Party in Interest.

E031854

(Super.Ct.No. J-100892)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Robert M. Padia,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

David A. Goldstein for Petitioner.

No appearance by Respondent.

William C. Katzenstein, County Counsel, and Julie A. Koons, Deputy County
Counsel, for Real Party in Interest.

1. Introduction

In a dependency case involving his two daughters, Mary and Robyn, father Robert B. petitions this court for extraordinary relief from the juvenile court's order terminating his reunification services and scheduling the selection and implementation hearing. Father claims the court erred in both terminating reunification services and finding them reasonable. Father also claims the court erred in failing to apply the relative placement preference. For the reasons provided below, we reject father's claims and deny his petition.

2. Factual and Procedural History

In late January of 2001, mother Nancy M. tested positive for amphetamines when she delivered her second child Robyn B. Mother also had tested positive for amphetamines during the delivery of her first child, Mary B., who was one year old at the time of Robyn's birth. Because the social worker's initial contact resulted in a hostile confrontation with mother and father, the social worker returned to the motel room, where the family resided, and placed the children into protective custody.

The Riverside County Department of Public Social Services (DPSS) filed a dependency petition for the children. The allegations in the petition included that both parents had a history with Child Protective Services based on their abuse of drugs, their neglect of the children, and their previous failure to participate in voluntary services.

At the jurisdictional hearing on April 3, 2001, the court declared the children to be dependent children of the court, placed them in foster care, and ordered mother and father to participate in reunification services. During the reunification period, although mother often visited with the children, father did not have face-to-face contact with the children

because of his work schedule. At one point, the court allowed mother to have an extended visit with the children on the condition that father would not live with them. Although father claimed to be living at his father's house, the social worker's inspection of that house revealed otherwise. Rather, on several separate occasions, the social worker found father at mother's residence. Based on mother's violation of the court's order, the social worker removed the children and placed them in foster care.

Based on both parents' failure to complete their reunification plan, the social worker recommended that the juvenile court terminate services. During the review hearing on June 10, 2002, the court found that DPSS offered reasonable services, but that parents failed to make progress toward reunification. The court found that the return of the children into parental custody would be detrimental to their well-being. The court terminated reunification services and scheduled the selection and implementation hearing.

3. Reunification Services Were Reasonable

Father claims the trial court erred in terminating reunification services and finding them reasonable.

Whenever the court removes a child from a mother's custody, the court must order DPSS to provide reunification services.¹ DPSS must make a good faith effort to provide

¹ Welfare and Institutions Code section 361.5, subdivision (a); *In re Maria S.* (2000) 82 Cal.App.4th 1032, 1038. All further statutory references will be to the Welfare and Institutions Code unless otherwise stated.

the parent with reasonable reunification services in light of the family's unique needs.²

“‘[T]he focus of reunification services is to remedy those problems which led to the removal of the children. . . .’ [Citation.] ‘[T]he record should show that the [department] identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the [mother] during the course of the service plan, and made reasonable efforts to assist the [mother when] compliance proved difficult’ [Citation.]”³ Before initiating proceedings to terminate parental rights, the court must find by clear and convincing evidence that DPSS provided reasonable reunification services.⁴

A juvenile court's finding of reasonable reunification services must be upheld if supported by substantial evidence.⁵ In applying the substantial evidence test, we construe all reasonable inferences in favor of the juvenile court's finding.⁶

Here, substantial evidence supports the court's finding. In the dependency petition, DPSS alleged that father failed to protect and care for his children by not resolving his or

² *In re Maria S.*, *supra*, 82 Cal.App.4th at page 1039, quoting *In re Monica C.* (1995) 31 Cal.App.4th 296, 306.

³ *In re Ronell A.* (1995) 44 Cal.App.4th 1352, 1362.

⁴ *In re Maria S.*, *supra*, 82 Cal.App.4th at page 1039, quoting *Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164-1165.

⁵ *In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581.

⁶ *Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 600; see also *In re Mark L.*, *supra*, 94 Cal.App.4th at pages 580-581; *In re Julie M.* (1999) 69 Cal.App.4th 41, 46.

mother's substance abuse problems, neglecting his children, and failing to participate in voluntary family maintenance services. To address these problems, father's reunification plan required parenting classes, random drug testing, and individual counseling. The plan also required that father maintain gainful employment and adequate housing.

As discussed below, the record reveals that reunification failed not because of any inadequacy in the services, but because of father's failure to comply with the requirements of his reunification plan. Although DPSS provided father with about 15 months of services, father began to participate in reunification about four weeks before the last review hearing.

Father specifically complains that because his work schedule prevented him from keeping his random drug testing appointments, the social worker should have made alternative arrangements, such as testing him in the field. Father appeared for one recent test, which proved negative, but failed to appear for seven prior tests, which resulted in positive findings. The social worker reported that defendant was uncooperative with DPSS in arranging for any other services. The social worker contacted father repeatedly, but father failed to return her calls. The record shows that father made "himself unavailable to [DPSS]."

In any event, substantial evidence supported the court's finding that DPSS maintained reasonable contact and made reasonable efforts to assist father with his reunification plan.⁷

⁷ See *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1011.

4. Termination of Reunification Services

In challenging the court's termination of reunification services, father claims that his efforts to satisfy the requirements of his reunification plan justified an extension of services.

Section 366.21, subdivision (g), provides that the court may extend reunification services only if there is a substantial probability that the child will be returned to the parent's custody within the extended period of time based on the following factors: the parent's consistent and regular contacts and visits with the child; the parent's significant progress in resolving the problems leading to the child's removal; and the parent's ability to complete his plan and provide for the child. We uphold a trial court's findings under section 366.21 if supported by substantial evidence.⁸

Substantial evidence supported the trial court's finding that there was no substantial probability that the children would be returned to father's custody based on father's performance during the reunification period. Father failed to maintain regular contacts or visits with the children. Although father seldom saw his children face to face, he made no additional requests for visitation.

While father completed one parenting class, he has failed to follow through with almost every other component of his reunification plan. As stated earlier, he failed to attend all but one of his drug testing appointments. Despite father's late efforts to comply with the counseling requirement, he failed to make and attend subsequent appointments.

⁸ See *James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020.

The few sessions that father managed to attend were inadequate to resolve his anger management and substance abuse problems. Father's dismal performance in the crucial aspects of his reunification plan can hardly be viewed as compliance.⁹

Nothing in the record indicates that father has resolved the problems leading to the dependency. Nor does the record show father's ability to provide for the children's safety, protection, and physical and emotional well-being. We therefore conclude that substantial evidence supported the juvenile court's decision to terminate his reunification services and schedule the selection and implementation hearing.

5. Relative Placement

In his final claim, father contends that the juvenile court erred in failing to apply the relative placement preference. Specifically, father contends that the children's best interest would have been served by placing the children with their maternal aunt.

Under section 361.3, the court and DPSS must give preferential consideration to the child's relative in making its placement decision. "'Preferential consideration' means that the relative seeking placement shall be the first placement to be considered and investigated."¹⁰ "[T]he statute expresse[s] a command that relatives be assessed and considered favorably, subject to the juvenile court's consideration of the suitability of the

⁹ See *Dawnel D. v. Superior Court* (1999) 74 Cal.App.4th 393, 398.

¹⁰ Section 361.3, subdivision (c)(1); see also *Cesar v. Superior Court* (2001) 91 Cal.App.4th 1023, 1033.

relative's home and the best interests of the child.' [Citation.]"¹¹ We review the trial court's determination under section 361.3 under the deferential abuse of discretion standard.¹²

As noted by DPSS, the children's maternal aunt, who lived in North Carolina, was a stranger to them. The maternal aunt had failed to come forward earlier in the proceedings. At this late stage, the children experienced stability in their current foster care placement, where they have been living for about a year. The social worker observed that it would be detrimental to remove the children from that stable environment and transfer them into a different home with an unknown relative in a foreign state. The juvenile court did not abuse its discretion in finding that the children's best interest would be to allow the children to remain in the current placement.

While the court did not order immediate placement with the maternal aunt, it indicated that it would reconsider the issue at a later time. The record does not show that the court failed to consider the relative placement preference. Rather, the record indicates that the court remained open to evaluating the maternal aunt as a potential permanent caretaker for the children. For these reasons, we reject father's argument that the court failed to apply the statutory preference set forth in section 361.3.

¹¹ *Cesar v. Superior Court*, *supra*, 91 Cal.App.4th at page 1033, quoting *In re Stephanie M.* (1994) 7 Cal.4th 295, 320.

¹² *In re Luke L.* (1996) 44 Cal.App.4th 670, 680, citing *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1060.

6. Disposition

We deny father's petition.

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s/Gaut
J.

We concur:

s/Richli
Acting P. J.

s/Ward
J.